HON'BLE THE CHIEF JUSTICE SRI G.S. SINGHVI
AND
HON'BLE SRI JUSTICE C.V. NAGARJUNA REDDY

Writ Appeal No.239 of 2007

Between:

Syed Sattar

... Appellant

And

K. Kotaiah and others

... Respondents

Counsel for the appellant: Shri K. Suresh Reddy

Counsel for respondent No.1: Shri N. Gurugopal

Counsel for respondent Nos.2 to 4: Government Pleader for Endowments

::JUDGMENT::

March 21, 2007

Per G.S. Singhvi, CJ

This appeal is directed against order dated 28-12-2006 passed by the learned Single Judge in Writ Petition No.22851 of 2005, whereby he quashed G.O.Ms.No.64, Revenue (Endowments IV) Department, dated 10-1-2005 issued by the State Government under proviso to Section 80 (1)(c) of the Andhra Pradesh Charitable and Hindu Religious Institutions and Endowments Act, 1987 (for short,

'the Act').

The Facts:

1) Shri Bhramarambha Chennamalleswara Swamy Temple, Esukapalli Village, Repalle Mandal, Guntur District (hereinafter described as 'the temple') is the owner of Ac.5-19 cts. of land comprised in Survey Nos.58/1 and 58/2, Esukapalli Village, Repalle Mandal, Guntur District. Out of this, Ac.4-20 cts. of land was encroached by 79 persons including the appellant.

2) In the year 1985, the trust of the temple passed resolution dated 15-5-1985 for sale of the land to the encroachers at the rate of Rs.3,500/- per cent. The encroachers did not agree to pay the price fixed by the trust. Thereupon, applications were filed for their eviction, which were allowed by the Deputy Commissioner, Endowments.

3) One of the encroachers namely, Shri B. Ramalingaiah represented to the government for regularizing the possession of the encroachers. His request was turned down by the State Government vide communication dated 4-9-1991. However, on an application filed by him for review of the decision contained in letter dated 4-9-1991, the State Government decided that about Ac.1-00 of land abutting the road be sold by public auction and the remaining land be sold to the encroachers giving preference to the original encroachers against whom orders of eviction had been passed.

4) After four years, Deputy Commissioner, Endowments, Guntur convened a meeting of the representatives of the political parties, encroachers and Executive Officer of the temple. After discussions, it was agreed that the encroachers should pay Rs.4,500/- per cent. Accordingly, resolution dated 10-

12-1995 was passed for alienation of land to the encroachers. As a sequel to this, the Deputy Commissioner of Endowments requested the Commissioner of Endowments to move the State Government for grant of permission under Section 80(1)(c) of the Act for disposal of the land of the temple otherwise than by public auction. The Commissioner sent his recommendations to the State Government vide letter dated 13-3-1996. The State Government accepted the recommendations of the Commissioner and issued G.O.Ms.No.1016, Revenue (Endowments-IV) Department, dated 10-12-1996, whereby permission was accorded to the Commissioner of Endowments to sell Ac.4-22 cts. of land to 79 encroachers by private negotiations @ Rs.4,500/- per cent.

5) On receipt of G.O.Ms.No.1016, dated 10-12-1996, the Commissioner of Endowments invited objections and suggestions. Thereafter, G.O.Ms.No.508, Revenue (Endowments-IV) Department, dated 26-6-1996 was issued authorizing the concerned officers to sell the land of the temple to the encroachers.

6) Most of the encroachers got their possession regularised by paying the price specified in the two G.Os, but the appellant, Smt. Y. Naga Malleswari, wife of Y.E. Varaprasad and Shaik Habib did not avail the benefit of the benevolent policy contained in the two G.Os. and continued to unauthorisedly occupy the temple land. The Executive Officer of the temple filed an application under Section 83 of the Act for their eviction. By an order dated 20-4-2002 passed in O.A.Nos.56 and 57 of 2001, the Deputy Commissioner directed that the three encroachers be evicted from the temple land.

7) The appellant challenged the order of eviction in Writ Petition No.13361 of 2002. The same was dismissed by the learned Single Judge on the ground of availability of alternative remedy of appeal.

8) Smt.Y. Nagamalleswari sold away the land in her occupation to Vuyyuru Mahalaxmi. The latter filed Writ Petition No.20138 of 2002 questioning the eviction proceedings. The same was dismissed by the learned Single Judge vide his order dated 10-10-2002.

9) The third encroacher, namely, Shaik Abin also sold away the land in his possession to Smt.Kesana Parvathamma and Writ Petition No.21081 of 2002 filed by the purchaser was dismissed by the learned Single Judge.

10) After 2 years and 5 months of the passing of eviction order by Deputy Commissioner, Endowments, Guntur, the Commissioner of Endowments vide his letter dated

23-9-2004 requested the government to grant permission for transfer of land to the remaining encroachers subject to the payment of price with 12% interest. While doing so, the Commissioner did not inform the government that the writ petitions filed by the encroachers and their transferees were dismissed by the High Court and the eviction order passed against them had become final and this appears to be the reason why the State Government accepted the innocuous suggestion made by the Commissioner and accorded permission for sale of the land by private negotiations in terms of the proviso to Section 80(1)(c) of the Act albeit without considering whether it will be in the interest of the temple.

11) The decision taken by the government for grant of permission

to sell the land by private negotiations was followed by the issuance of G.O.Ms.No.64, dated 10-1-2005.

Shri Kesana Kotaiah (respondent No.1 herein), who remained Trustee of the temple for two terms from 1999 to 2003 filed Writ Petition No.22851 of 2005 for quashing G.O.Ms.No.64, dated 10-1-2005. He pleaded that in the face of the eviction orders passed by the competent authority under Section 83 of the Act, the State Government could not have exercised power under Section 80 (1)(c) of the Act.

In the counter-affidavits filed on behalf of the Government of Andhra Pradesh and Commissioner of Endowments, it was pleaded that permission was accorded for sale of land under Section 80 (1)(c) because the encroachers were in possession for last more than 50 years and possession of majority of other encroachers had been regularised in accordance with the decision contained in G.O.Ms.No.1016, dated 10-12-1996 and G.O.Ms.No.508, dated 26-6-1999.

In a separate affidavit filed him, the appellant pleaded that after dismissal of Writ Petition No.13361 of 2002, he filed appeal before the Commissioner of Endowments and during pendency of the appeal, the government decided to sanction the sale of land to him subject to payment of price in terms of G.O.Ms.No.508, dated 26-6-1999 with 12% interest.

The learned Single Judge considered the pleadings of the parties, the record produced by the learned Government Pleader for Endowments and held that the exercise of power by the State Government under Section 80 (1)(c) is vitiated by arbitrariness and legal mala fides. This is evident from the following extracts of the order under challenge:

"None of the orders of the Government (in G.O.Ms.No.1016, 508 or 64) record the satisfaction of the State that the alienation in favour of the encroachers was a prudent necessary or beneficial course of action for the institution or that it is in the interest of the institution that the sale should be otherwise than by public auction. In the context of the provision of Section 80 of the Act which consecrates a conditional power to the Government, the executive agencies of the State whether they be at the Secretariat level or in the Commissionerate of Endowments do not exercise an uncanalised or uncharted jurisdiction and power. The power is a conditioned power and is conferred to be employed strictly in the interest of the Hindu religious institution or endowment. The Commissioner of Endowments and the Government as well, before exercising power under the provisions of the Act would do well to at least read the provisions so as to understand the purposes for which power is conferred. Had adequate care been bestowed, it would have been apparent, even on a casual reading of the provisions of Sec.80, that Government may exercise power under the proviso to Sec.80(c) only if the exercise is in the interest of the institution or endowment. The satisfaction (as to the existence of the interest of the institution) will have to be recorded by giving reasons.

No reasons whatsoever are recorded in G.O.Ms.No.1016, 808 or 64. The inference is perhaps compelling that none of the authors of the orders passed had even cared to read the provisions of Sec.80.

… … …

In the considered view of this Court the order of the 1st respondent in G.O.Ms.No.64, Revenue Department dated.10-01-2005 is perverse and suffers from the vice of malice in law, total non-application of mind and subversion of the provisions of Sec.80 of the Act. This Court rejects the equivocal implication of the 1st respondent in the counter-affidavit that the respondent Nos.1 and 2 had to cave in to the encroachers since there was no alternative. As the Act provides speedy and summary procedures for eviction of

encroachers there was no justifiable reason why the encroachers could not have been evicted for over 50 years. The counter-affidavit is designedly silent as to the steps taken for evicting the encroachers; why the steps if any taken were unproductive. It is therefore not possible to conclude that alienation of the land in favour of the encroachers was the only pragmatic alternative left to the State. The State does not assert that the encroachers overpowered the State or debilitated the vast powers available under Sec.80 to 86 of the Act. The inference is therefore compelling that the unlawful concern of the decision making authorities for the encroachers blinkered their discretion and disabled enforcement of the provisions of the Act. While exercising administrative powers in relation to administration of the material assets of religious institutions, the State should ever be conscious that it operated in a very delicate constitutional arena."

Shri K. Suresh Reddy argued that the order under challenge is vitiated by an error of law and is liable to be set aside because while quashing G.O.Ms.No.64, dated 10-1-2005, the learned Single Judge overlooked the fact that possession of more than 70 encroachers had been regularised pursuant to G.O.Ms.Nos.1016, dated 10-12-1996 and 508 dated 26-6-1999. Shri Reddy pointed out that even though respondent No.1 had challenged the legality of G.O.Ms.No.1016 and G.O.Ms.No.508, he did not pursue the same and argued that the learned Single Judge should have declined the prayer of the writ petitioners on this ground alone. Learned counsel further argued that all those who encroached the temple land are similarly situated and the appellant cannot be singled out for a discriminatory treatment.

Shri N. Gurugopal, learned counsel for respondent No.1 supported the order under challenge and argued that the learned Single Judge did not commit any error by nullifying G.O.Ms.No.64 because the same had the effect of setting at naught the order of

eviction passed by the Deputy Commissioner, which acquired finality with the dismissal of Writ Petition No.13361 of 2002 filed by the appellant.

We have thoughtfully considered the respective submissions/arguments and scanned the record. Section 80 (1) of the Act, which has bearing on the decision of this appeal, reads as under:

> **80. Alienation of immovable property:**
> (1) (a) Any gift, sale, exchange or mortgage of any immovable property belonging to or given or endowed for the purpose of any charitable or religious institution or endowment shall be null and void unless any such transaction, not being a gift, is effected with prior sanction of the Commissioner.
>
> (b) The Commissioner, may after publishing in the Andhra Pradesh Gazette the particulars relating to the proposed transaction and inviting any objections and suggestions, with the respect thereto and considering all objections and suggestions if any received from the trustee or other person having interest, accord such sanction where he considers that the transaction is-
>
> (i) prudent and necessary or beneficial to the institution or endowment:
> (ii) in respect of immovable property which is uneconomical for the institution or endowment to own and maintain; and
> (iii) the consideration therefor is adequate and proper.
>
> (c) Every sale of any such immovable property sanctioned by the Commissioner under clause (b) shall be effected by tender-cum-publication in the prescribed manner subject to the confirmation by Commissioner within a period prescribed;
>
> Provided that the Government may, in the interest of the institution or endowment and for reasons to be recorded therefor in writing, permit the sale of such immovable property, otherwise than by public auction;
>
> Provided further that the Government may purchase the

lands situated in Scheduled Areas belonging to institutions or endowments, wherever necessary, otherwise than by public auction and assign such lands to the members of the Scheduled Tribes.

Explanation:- In this section, the expression "Scheduled Tribe" shall have the meaning assigned to it in clause(25) of Article 366 of the Constitution and the expression 'Scheduled Area' shall have the meaning assigned to it in sub-paragraph (1) of paragraph 6 of the Fifth Schedule to the Constitution of India.

An analysis of the above reproduced provisions makes it clear that the immovable property belonging to any charitable or religious institution or endowment cannot be alienated by way of sale, exchange or mortgage except with the prior sanction of the Commissioner. Clause (b) of Section 80 (1) casts a duty on the Commissioner to invite objections and suggestions with respect to proposed sale, exchange or mortgage of the immovable property of any charitable or religious institution or endowment. Clause (c) postulates disposal of the immovable property of any charitable or religious institution or endowment by tender-cum-public auction. Proviso to Clause (c) of Section 80 (1) empowers the government to permit sale of immovable property otherwise than by public auction if such alienation is in the interest of the institution or endowment.

Since the proviso to Section 80 (1) (c) is in the nature of an exception, the same has to be construed strictly. This necessarily means that the power vested in the government to accord permission for sale of immovable property of any charitable or religious institution or endowment otherwise than by way of tender-cum-public auction cannot be exercised only when such alienation is considered to be in the interest of the institution or endowment. To put it differently, any

deviation from the normal rule of disposal of immovable property of any charitable or religious institution or endowment by tender-cum-public auction can be made only if the government is satisfied that such deviation is in the interest of the institution or endowment. The satisfaction of the government has to be founded on an objective consideration of the relevant material and is required to be reflected in the form of reasons to be recorded in writing. By incorporating the requirement of recording of reasons, the legislature wanted to ensure that the power under the proviso to Section 80(1)(c) is not misused or exercised for extraneous or collateral purpose and the decision of the government is not influenced by irrelevant considerations. Therefore, it must be held that whenever the government seeks to exercise power under the proviso to Section 80(1)(c), it must record reasons in writing clearly indicating application of mind to the imperative of making departure from the rule of tender-cum-public auction in the interest of the institution or endowment.

In the case before us, we find that G.O.Ms.No.64, dated 10-1-2005 was issued without even adverting to the conditions which are required to be satisfied for sanctioning sale of the property of the temple otherwise than by way of public auction. The learned Single Judge has unequivocally held that the concerned authority did not apply its mind to the conditions specified in the proviso to Section 80 (1)(c) of the Act. The learned Single Judge found that the government did not direct its attention to the issue of interest of the institution and the sole purpose of the G.O. impugned in the writ petition was to regularize the unauthorized encroachment of the temple land by those against whom order of eviction had been passed by the competent authority. Therefore, we do not find any valid ground, reason or justification to interfere with the order under

challenge.

During the course of hearing, the learned Government Pleader could not draw our attention to any document from which it can be inferred that before according permission for sale of the land in dispute otherwise than by way of public auction, the competent authority had applied mind to the issue of the institutional interest and the fact that the eviction order passed against the appellant had become final.

In view of the above, we have no hesitation to record our concurrence with the view of the learned Single Judge that the exercise of power by the State Government under the proviso to Section 80(1)(c) is arbitrary, unreasonable and unjustified.

The argument of Shri K. Suresh Reddy that the annulment of G.O.Ms.No.64, dated 10-1-2005 by the learned Single Judge has resulted in discrimination qua his client sounds attractive, but lacks merit and is liable to be rejected. Firstly, the appellant's case is not at par with other encroachers, who had availed the benefit of the policy contained in G.O.Ms.No.1016, dated 10-12-1996 and G.O.Ms.No.508, dated 26-6-1999. Admittedly, the appellant did not take the benefit of extreme compassion exhibited by the government by issuing two G.Os. Not only this, as a sequel to his failure to deposit the price of the land, the Deputy Commissioner, Endowments ordered his eviction and Writ Petition No.13361 of 2002 filed by him questioning the order of eviction was dismissed by the learned Single Judge. Therefore, his claim of parity is liable to be negatived. Secondly, even if the appellant's case is held to be similar to those who availed the benefit of G.O.Ms.Nos.1016 and 508, the plea of discrimination is liable to be rejected.

Article 14 of the Constitution of India which is genus of the

doctrine of equality declares that the State shall not deny to any person equality before the law or the equal protection of laws within the territory of India. In the last 55 years, the Courts have given different dimensions to the doctrine of equality so as to bring every arbitrary action of the State and its functionaries within the ambit of the Court's power of judicial review. The ever expanding horizon of the equality clause has also encouraged filing of large number of petitions in which the petitioners seek relief solely on the premise that in the case of some other person the public authority has given relief. Till recently, the Courts had enforced equality clause and entertained the claim of such petitioners without going into the question whether the action taken by the State and/or public authority in the other case or order passed in favour of some other person is in consonance with law. But this trend has been reversed by the judgments of the Supreme Court in **Chandigarh Administration v. Jagjit Singh**[1], **Jaipur Development Authority v. Daulat Mal Jain**[2], **Gursharan Singh v. New Delhi Municipal Committee**[3], **Faridabad CT Scan Centre v. D.G. Health Services**[4], **Style (Dress Land) v. Union Territory, Chandigarh**[5] and **State of Bihar v. Kameshwar Prasad Singh**[6].

The facts of **Jagjit Singh's** case (supra) were that the respondents who had given the highest bid for 338 sq. yds plot in Section 31A, Chandigarh defaulted in paying the price in accordance with the terms and conditions of allotment. After giving him opportunity of showing cause, the Estate Officer cancelled the lease of the plot. The appeal and the revision filed by him were dismissed by the Chief Administrator and Chief Commissioner, Chandigarh

respectively. Thereafter, the respondent applied for refund of the amount deposited by him. His request was accepted and the entire amount paid by him was refunded. He then filed a petition for review of the order passed by the Chief Commissioner, which was dismissed. However, the officer concerned entertained the second review and directed that the plot be restored to the respondent. The latter did not avail benefit of this unusual order and started litigation by filing writ petition in the High Court, which was dismissed on March 18, 1991. Thereafter, the respondent again approached the Estate Officer with the request to settle his case in accordance with the policy of the Government to restore the plots to the defaulters by charging forfeiture amount of 5%. His request was rejected by the Estate Officer. He then filed another writ petition before the High Court which was allowed only on the ground that in another case pertaining to Smt. Prakash Rani, Administrator had restored the plot even after her writ petition was dismissed by the High Court. The Chandigarh Administration challenged the order of the High Court by filing petition for special leave to appeal. While reversing the order of the High Court, their Lordships of the Supreme Court observed as under:

> "We are of the opinion that the basis or the principle, if it be called one, on which the writ petition has been allowed by the High Court is unsustainable in law and indefensible in principle. Since we have come across many such instances, we think it necessary to deal with such pleas at a little length. Generally speaking, the mere fact that the respondent-authority has passed a particular order in the case of another person similarly situated can never be the ground for issuing a writ in favour of the petitioner on the plea of discrimination. The order in favour of the other person might be legal and valid or it might not be. That has to be investigated first before it can be directed to be followed in the case of the

petitioner. If the order in favour of the other person is found to be contrary to law or not warranted in the facts and circumstances of his case, it is obvious that such illegal or unwarranted order cannot be made the basis of issuing a writ compelling the respondent-authority to repeat the illegality or to pass another unwarranted order. The extraordinary and discretionary power of the High Court cannot be exercised for such a purpose. Merely because the respondent-authority has passed one illegal/unwarranted order, it does not entitle the High Court to compel the authority to repeat that illegality over again and again. The illegal/unwarranted action must be corrected, if it can be done according to law indeed, wherever it is possible, the court should direct the appropriate authority to correct such wrong orders in accordance with law – but even if it cannot be corrected, it is difficult to see how it can be made a basis for its repetition. By refusing to direct the respondent-authority to repeat the illegality, the Court is not condoning the earlier illegal act/order nor can such illegal order constitute the basis for a legitimate complaint of discrimination. Giving effect to such pleas would be prejudicial to the interests of law and will do incalculable mischief to public interest. It will be a negation of law and the rule of law. Of course, if in case the order in favour of the other person is found to be a lawful and justified one it can be followed and a similar relief can be given to the petitioner if it is found that the petitioner's case is similar to the other person's case. But then why examine another person's case in his absence rather than examining the case of the petitioner who is present before the court and seeking the relief. It is not more appropriate and convenient to examine the entitlement of the petitioner before the court to the relief asked for in the facts and circumstances of his case than to enquire into the correctness of the order made or action taken in another person's case, which other person is not before the Court nor is his case. In our considered opinion, such a course – barring exceptional situations – would neither be advisable nor desirable. In other words, the High Court cannot ignore the law and the well-accepted norms governing the writ jurisdiction and say that because in one

case a particular order has been passed or a particular action has been taken, the same must be repeated irrespective of the fact whether such an order or action is contrary to law or otherwise. Each case must be decided on its own merits, factual and legal, in accordance with relevant legal principles. The orders and actions of the authorities cannot be equated to the judgments of the Supreme Court and High Courts nor can they be elevated to the level of the precedents, as understood in the judicial world. (What is the position in the case of orders passed by authorities in exercise of their quasi-judicial power, we express no opinion. That can be dealt with when a proper case arises)."

In **Secretary Jaipur Development Authority vs. Daulat Mal Jain** (supra), the Supreme Court held as under:

"The illegal allotment founded upon ultra vires and illegal policy of allotment made to some other persons wrongly, would not form a legal premise to ensure it to the respondent or to repeat or perpetuate such illegal order, nor could it be legalized. In other words, judicial process cannot be abused to perpetuate the illegalities. Article 14 proceeds on the premise that a citizen has legal and valid right enforceable at law and persons having similar right and persons similarly circumstanced, cannot be denied of the benefit thereof. Such person cannot be discriminated to deny the same benefit. The rational relationship and legal back-up are the foundations to invoke the doctrine of equality in case of persons similarly situated. If some persons derived benefit by illegality and had escaped from the clutches of law, similar persons cannot plead, nor the Court can countenance that benefit had from infraction of law and must be allowed to be retained. One illegality cannot be compounded by permitting similar illegal or illegitimate or ultra vires acts."

In **Gursharan Singh v. New Delhi Municipal Committee** (supra), the Supreme Court refused to invoke Article 14 of the Constitution of India for giving relief to the appellant and observed:

> "Under Article 14 guarantee of equality before law is a positive concept and it cannot be enforced by a citizen or court in a negative manner. If an illegality or irregularity has been committed in favour of any individual or a group of individuals, others cannot invoke the jurisdiction of the High Court or of the Supreme Court, that the same irregularity or illegality be committed by the State or an authority which can be held to be a State within the meaning of Article 12 of the Constitution, so far such petitioners are concerned, on the reasoning that they have been denied the benefits which have been extended to others although in an irregular or illegal manner. Such petitioners can question the validity of orders which are said to have been passed in favour of persons who were not entitled to the same, but they cannot claim orders which are not sanctioned by law in their favour on principle of equality before law."

In **Faridabad CT. Scan Centre v. D.G. Health Services** (supra), the three Judges Bench of the Supreme Court over ruled the earlier decision of the two Judges Bench and held:

> "Article 14 cannot be invoked in cases where wrong orders are issued in favour of others. Wrong orders cannot be perpetuated with the help of Article 14 on the basis that such wrong orders were earlier passed in favour of some other persons and that, therefore, there will be discrimination against others if correct orders are passed against them. The benefit of the exemption notification, in the present case, cannot, therefore, be extended to the petitioner on the ground that such benefit has been wrongly extended to others. "

No other point has been argued.

In the result, the appeal is dismissed.

As a sequel to dismissal of the appeal, WAMP No.449 of 2006 filed by the appellant for interim relief is disposed of as infructuous.

G.S. SINGHVI, CJ

March 21, 2007

C.V. NAGARJUNA REDDY, J

Note: L.R. copy be marked.

svs

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[1] AIR 1995 SC 705
[2] (1997) 1 SCC 35
[3] (1996) 2 SCC 459
[4] (1997) 7 SCC 752
[5] (1999) 7 SCC 89
[6] (2000) 9 SCC 94